

113TH CONGRESS
1ST SESSION

H. R. 190

To require the filing of certain information regarding a residential mortgage
in any proceeding for foreclosure of the mortgage.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2013

Ms. KAPTUR introduced the following bill; which was referred to the
Committee on Financial Services

A BILL

To require the filing of certain information regarding a residential mortgage in any proceeding for foreclosure of the mortgage.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Produce the Note Act
5 of 2013”.

6 **SEC. 2. REQUIRED INFORMATION AND NOTICE.**

7 Notwithstanding any other provision of State or Fed-
8 eral law, no foreclosure, whether judicial or nonjudicial,
9 may be commenced with respect to a covered residential

1 mortgage unless the person commencing the foreclosure
2 complies with all of the following requirements:

3 (1) SUBMISSION OF INFORMATION.—The per-
4 son commencing the foreclosure shall submit to the
5 court, in the case of a judicial foreclosure, or to the
6 office of the State or other subdivision of the State
7 to which notice of default, foreclosure, or sale of the
8 foreclosed property is required under State law to be
9 submitted, in the case of a nonjudicial foreclosure,
10 a report prepared by an independent party that in-
11 cludes the following information:

12 (A) A statement of findings as to whether
13 the covered residential mortgage was made and
14 serviced in compliance with the terms of, and
15 regulations under, the following laws:

16 (i) The Truth in Lending Act (15
17 U.S.C. 1601) and Regulation Z of the
18 Board of Governors of the Federal Reserve
19 System under such Act.

20 (ii) The Equal Credit Opportunity Act
21 (15 U.S.C. 1691 et seq.) and Regulation B
22 of the Board of Governors of the Federal
23 Reserve System under such Act.

24 (iii) The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.).

(iv) The Federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

10 (vii) The Fair Housing Act (42
11 U.S.C. 3601 et seq.).

12 (viii) The Home Mortgage Disclosure
13 Act of 1975 (12 U.S.C. 2801 et seq.).

14 (ix) The Financial Institutions Re-
15 form, Recovery, and Enforcement Act of
16 1989 (Public Law 101-73).

24 (C) If any noncompliance is found pursu-
25 ant to subparagraph (A), a statement as to

whether the violations are such that the mortgagor should be afforded an extended right, beyond the period permitted under State law—

(D) Identification of—

21 (E) A statement of whether a bona fide de-
22 fault on the covered mortgage has occurred.

(F) A description of any hardship circumstances regarding the economic circumstances of the mortgagor that would be rel-

1 evant to a determination by the mortgagee of
2 whether to modify the mortgage.

3 (G) A statement of whether the mortgage
4 is insured under title II of the National Hous-
5 ing Act (12 U.S.C. 1707 et seq.).

6 (H) A statement of whether the mortgage
7 is, or any terms of the mortgage are, unfair or
8 constitute an unfair or deceptive act or practice
9 violating the Federal Trade Commission Act
10 (15 U.S.C. 41 et seq.), and if so, a description
11 of the unfairness or the unfair or deceptive act
12 or practice.

13 (I) A statement of whether any material
14 misrepresentations were made that fraudulently
15 induced the mortgagor to enter into the trans-
16 action to his or her detriment, and if so, a de-
17 scription of such misrepresentation.

18 (J) Identification of any offsets to the
19 creditor claim on the mortgage.

20 (K) A statement of the racial characteris-
21 tics, gender, census tract, and income level of
22 the mortgagor, as such terms are used for pur-
23 poses of compliance with the Home Mortgage
24 Disclosure Act of 1975 (12 U.S.C. 2801 et
25 seq.).

(2) REQUIRED NOTIFICATION.—The person commencing the foreclosure shall provide notice to the mortgagor, in writing, not less than 5 days before any action is taken to commence the proceeding or action for foreclosure, and shall certify to the court, in the case of a judicial foreclosure, or to the office of the State or other subdivision of the State to which notice of default, foreclosure, or sale of the foreclosed property is required under State law to be submitted in the case of a nonjudicial foreclosure, that such notice has been provided, that includes the following information:

21 (C) A statement of any penalties and other
22 consequences for the mortgagor if the mort-
23 gagor does not respond or file answers to the
24 foreclosure.

(D) A statement of the amounts claimed to be in arrears under the mortgage and needed to reinstate the account and all associated costs and fees, set forth in itemized and distinct categories, and current and correct contact information, including telephone numbers, electronic mail addresses, and postal addresses, at which the mortgagor can obtain further information regarding the mortgage account.

(E) A description of any additional options, such as mortgage workout, modification, mitigation, and redemption, that might be available to the mortgagor to prevent the foreclosure from proceeding and a description of how the mortgagor can obtain additional information regarding such options.

(F) A statement of the correct names, telephone numbers, electronic mail addresses, postal addresses, and any State licensing numbers of the mortgage holder, the mortgage servicer, and the person or persons authorized to take the actions described pursuant to subparagraph (E).

1 **SEC. 3. DEFINITIONS.**

2 For purposes of this Act, the following definitions
3 shall apply:

4 (1) INDEPENDENT PARTY.—The term “independent party” means, with respect to foreclosure on
5 a covered residential mortgage, an individual who
6 has no interest in, or affiliation with, any party involved in such foreclosure or with the covered residential mortgage involved in such foreclosure, including any party that owns, manages, controls, or
7 directs such an involved party, any party that is
8 owned, managed, controlled, or directed by such an involved party, or any party that is under common ownership, management, control, or direction with
9 such an involved party.

10 (2) COVERED RESIDENTIAL MORTGAGE.—The term “covered residential mortgage” means a mortgage that meets the following requirements:

11 (A) The property securing the obligation under the mortgage shall be a one- to four-family dwelling, including a condominium or a share in a cooperative ownership housing association.

12 (B) The mortgagor under the mortgage shall occupy the property securing the obliga-

1 tion under the mortgage as his or her principal
2 residence.

3 (3) MORTGAGE.—

4 (A) IN GENERAL.—The term “mortgage”
5 means a deed of trust, mortgage, deed to secure
6 debt, security agreement, or any other form of
7 instrument under which any property (real, per-
8 sonal, or mixed), or any interest in property
9 (including leaseholds, life estates, reversionary
10 interests, and any other estates under applica-
11 ble State law), is conveyed in trust, mortgaged,
12 encumbered, pledged, or otherwise rendered
13 subject to a lien for the purpose of securing the
14 payment of money or the performance of an ob-
15 ligation.

16 (B) CONDOMINIUMS AND COOPERA-
17 TIVES.—Such term includes a first mortgage
18 given to secure—

19 (i) the unpaid purchase price of a fee
20 interest in, or a long-term leasehold inter-
21 est in, a one-family unit in a multifamily
22 project, including a project in which the
23 dwelling units are attached or are manu-
24 factured housing units, semi-detached, or
25 detached, and an undivided interest in the

1 common areas and facilities that serve the
2 project; or
3 (ii) repayment of a loan made to fi-
4 nance the purchase of stock or membership
5 in a cooperative housing corporation the
6 permanent occupancy of dwelling units of
7 which is restricted to members of such cor-
8 poration, where the purchase of such stock
9 or membership entitles the purchaser to
10 the permanent occupancy of one of such
11 units.

12 **SEC. 4. RELATION TO STATE LAW.**

13 This Act does not annul, alter, or affect, or exempt
14 any person subject to the provisions of this Act from com-
15 plying with, the laws of any State or subdivision thereof
16 with respect to foreclosure on a residential mortgage, ex-
17 cept to the extent that those laws are inconsistent with
18 any provision of this Act, and then only to the extent of
19 the inconsistency. No provision of the laws of any State
20 or subdivision thereof may be determined to be incon-
21 sistent with any provision of this Act if such law is deter-
22 mined to require greater disclosure or notice than is re-
23 quired under this Act or to provide greater protection to
24 the mortgagee than is required under this Act.

